

# EMERGENCY

STATE OF CALIFORNIA--OFFICE OF ADMINISTRATIVE LAW

## NOTICE PUBLICATION/REGULATIONS SUBMISSION

(See instructions on reverse)

For use by Secretary of State only

STD. 400 (REV. '4-99)

OAL FILE NUMBERS	NOTICE FILE NUMBER <b>Z-06-0407-01</b>	REGULATORY ACTION NUMBER	EMERGENCY NUMBER <b>06-0914-01EE</b>
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For use by Office of Administrative Law (OAL) only

2006 SEP 14 PM 3:55

OFFICE OF  
ADMINISTRATIVE LAW

NOTICE

REGULATIONS

AGENCY WITH RULEMAKING AUTHORITY  
DEPARTMENT OF MENTAL HEALTHAGENCY FILE NUMBER (if any)  
2ND READOPT 3400

### A. PUBLICATION OF NOTICE (Complete for publication in Notice Register)

1. SUBJECT OF NOTICE		TITLE(S) <b>9</b>	FIRST SECTION AFFECTED	2. REQUESTED PUBLICATION DATE
3. NOTICE TYPE <input type="checkbox"/> Notice re Proposed Regulatory Action <input type="checkbox"/> Other	4. AGENCY CONTACT PERSON		TELEPHONE NUMBER ( )	FAX NUMBER (Optional) ( )
OAL USE ONLY	ACTION ON PROPOSED NOTICE <input type="checkbox"/> Approved as Submitted <input type="checkbox"/> Approved as Modified <input type="checkbox"/> Disapproved/Withdrawn		NOTICE REGISTER NUMBER	PUBLICATION DATE

### B. SUBMISSION OF REGULATIONS (Complete when submitting regulations)

1a. SUBJECT OF REGULATION(S) MENTAL HEALTH SERVICES ACT	1b. ALL PREVIOUS RELATED OAL REGULATORY ACTION NUMBER(S) 05-1230-01EP, 06-0113-01E and 06-0522-01EE
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### 2. SPECIFY CALIFORNIA CODE OF REGULATIONS TITLE(S) AND SECTION(S) (Including title 26, if toxics-related)

SECTION(S) AFFECTED (List all section number(s) individually)	ADOPT 3400
	AMEND
TITLE(S)	REPEAL

### 3. TYPE OF FILING

<input type="checkbox"/> Regular Rulemaking (Gov. Code, § 11346)	<input type="checkbox"/> Resubmittal of disapproved or withdrawn nonemergency filing (Gov. Code, §§ 11349.3, 11349.4)	<input type="checkbox"/> Emergency (Gov. Code, § 11346.1(b))	<input checked="" type="checkbox"/> Emergency Readopt (Gov. Code, § 11346.1(h))	<input type="checkbox"/> Resubmittal of disapproved or withdrawn emergency filing (Gov. Code, § 11346.1)
<input type="checkbox"/> Certificate of Compliance: The agency officer named below certifies that this agency complied with the provisions of Government Code §§ 11346.2 - 11346.9 prior to, or within 120 days of, the effective date of the regulations listed above.				
<input type="checkbox"/> Print Only	<input type="checkbox"/> Changes Without Regulatory Effect (Cal. Code Regs., title 1, § 100)	<input type="checkbox"/> Other (specify) _____		

4. ALL BEGINNING AND ENDING DATES OF AVAILABILITY OF MODIFIED REGULATIONS AND/OR MATERIAL ADDED TO THE RULEMAKING FILE (Cal. Code Regs. title 1, §§ 44 and 45)

5. EFFECTIVE DATE OF REGULATORY CHANGES (Gov. Code, §§ 11343.4, 11346.1(d))		
<input type="checkbox"/> Effective 30th day after filing with Secretary of State	<input type="checkbox"/> Effective on filing with Secretary of State	<input checked="" type="checkbox"/> Effective other (Specify) <b>September 22, 2006</b>

6. CHECK IF THESE REGULATIONS REQUIRE NOTICE TO, OR REVIEW, CONSULTATION, APPROVAL OR CONCURRENCE BY, ANOTHER AGENCY OR ENTITY		
<input type="checkbox"/> Department of Finance (Form STD. 399) (SAM §6660)	<input type="checkbox"/> Fair Political Practices Commission	<input type="checkbox"/> State Fire Marshal
<input type="checkbox"/> Other (Specify) _____		

7. CONTACT PERSON STEVE APPEL	TELEPHONE NUMBER (916) 654-4027	FAX NUMBER (Optional) (916) 651-9919	E-MAIL ADDRESS (Optional) STEVE.APPEL@DMH.CA.GOV
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8.

I certify that the attached copy of the regulation(s) is a true and correct copy of the regulation(s) identified on this form, that the information specified on this form is true and correct, and that I am the head of the agency taking this action, or a designee of the head of the agency, and am authorized to make this certification.

SIGNATURE OF AGENCY HEAD OR DESIGNEE 	DATE <b>9/14/06</b>
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TYPED NAME AND TITLE OF SIGNATORY

STEPHEN W. MAYBERG, PH.D.; DIRECTOR, DEPARTMENT OF MENTAL HEALTH

## **Article 4: FUNDING PROVISIONS**

### **READOPT**

#### **Section 3400. Allowable Costs and Expenditures.**

- (a) No change
- (b) Programs and/or services provided with MHSA funds shall:
  - (1) Offer mental health services and supports to individuals with severe mental illness and/or severe mental disorders.
  - (2) Be voluntary in nature.
  - (3) Comply with the non-supplant requirement of Section 3410.
- (c) To the extent allowed under (a) and (b) of this Section, the County may use MHSA funds to match other funding sources, such as Medi-Cal and the Healthy Families Program. The County shall not submit requests for MHSA funding solely for the purpose of increasing reimbursement for Medi-Cal or the Healthy Families Program.
- (d) The County shall not be reimbursed for expenditures that occurred prior to January 1, 2005.
  - (1) County shall be reimbursed for expenditures incurred after January 1, 2005 only with prior state approval.

NOTE: Authority cited: Section 5898, Welfare and Institutions Code. References: Sections 5813.5(b), 5878.3(a), 5891, and 5892, Welfare and Institutions Code.

## FINDING OF EMERGENCY

**The Department finds that the readoption of Section 3400(b) is necessary for the immediate preservation of the public peace, health and safety and/or general welfare.**

California voters approved Proposition 63 in the November 2004 General Election. Proposition 63, now known as the Mental Health Services Act (MHSA), became effective on January 1, 2005. Through imposition of a 1% tax on personal income in excess of \$1 million, the MHSA provides the opportunity for the State Department of Mental Health (DMH) to provide increased funding, personnel and other resources to support county mental health programs and monitor progress toward statewide goals for children, youth, adults, older adults and families. The MHSA addresses a broad continuum of prevention, early intervention and service needs that are designed to work together to reduce the suffering of individuals, as well as the harm to society, which results from untreated mental illness.

The MHSA recognizes the **emergent** nature of the need for new and expanded mental health services in California.

- (a) Failure to provide timely treatment can destroy individuals and families. No parent should have to give up custody of a child and no adult or senior should have to become disabled or homeless to get mental health services as too often happens now. No individual or family should have to suffer inadequate or insufficient treatment due to language or cultural barriers to care. Lives can be devastated and families can be financially ruined by the costs of care. Yet, for too many Californians with mental illness, the mental health services and supports they need remain fragmented, disconnected and often inadequate, frustrating the opportunity for recovery.
- (b) Untreated mental illness is the leading cause of disability and suicide and imposes high costs on state and local government. Many people left untreated or with insufficient care see their mental illness worsen. Children left untreated often become unable to learn or participate in a normal school environment. Adults lose their ability to work and be independent; many become homeless and are subject to frequent hospitalizations or jail. State and county governments are forced to pay billions of dollars each year in emergency medical care, long-term nursing home care, unemployment, housing, and law enforcement, including juvenile justice, jail and prison costs.

At the end of 2005, DMH adopted an abbreviated set of emergency regulations, most of which addressed the community services and supports aspect of the MHSA since this is the focus of the Act. Section 3400(b), as filed with the Secretary of State contained an error, needing correcting to ensure **Allowable Costs and Expenditures**, was implemented by the counties in accordance with current law governing allowable expenditures of MHSA monies.

**Specifically, Section 3400(b) provides three requirements that must be met by any programs and/or services that are provided with MHSA funds. DMH cannot enter into contracts for services with the counties until these requirements are restored. Without this text, the regulations governing its policies and procedures for prevention and**

early intervention are vague. Accordingly, large sums of money, which are needed by the counties in order to provide prevention and intervention services in a severely under-funded system, cannot be properly disbursed. This factor is the justification for urgency.

1. Subsection (b)(1) states the services and supports must be to individuals with severe mental illness and/or severe mental disorders. This subsection is necessary to ensure that the use of the funds is consistent with the Findings and Declaration as stated in the MHSA which recognizes the issues that arise when mental illness/mental disorders are not treated. The passage of Proposition 63, MHSA, provides funding specifically for the treatment of individuals with severe mental illness/disorders.
2. Subsection (b)(2) states services/programs must be designed to be voluntary in nature. This subsection is necessary to ensure the MHSA funds are used to establish and or expand the array of voluntary programs/services offered by the county. The voluntary or involuntary legal status of an individual with serious mental illness/disorders should not affect his/her ability to access these programs/services.
3. Subsection (b)(3) states the funds cannot supplant existing state or county funds utilized to provide mental health services. This subsection is necessary to inform the county that the MHSA funds cannot be used to fund an existing program or service, unless such program or service is being expanded as specified in Section 3400(a) above. This requirement to comply with the non-supplant requirements of Section 3410 is in keeping with specific language contained in Section 5891 of the W&I Code.

On January 13, 2006, DMH submitted an amendment to section 3400(b) to correct this error of omission. The Office of Administrative Law (OAL) determined that the amended regulation did not meet the exemption provided in law; therefore, DMH filed the modification as an emergency with full OAL review. OAL subsequently approved the January 13, 2006, amendment and a subsequent readoption effective May 24, 2006. **Due to continuing efforts to craft a satisfactory regulation, based on extensive feedback, DMH will require additional time to craft the regulation text; thereby, requiring a second readoption.**

**AUTHORITY:** Section 5898, Welfare and Institutions Code.

**REFERENCE:** Sections 5813.5(b), 5840, *et seq.*, 5847(a)(1) through (6) and (d), 5848(a), 5878.3(a), 5891, 5892, 5897, and 5898, Welfare and Institutions Code.

The original Economic and Fiscal Impact Statement (STD. 399) signed on December 30, 2005, reflects the modifications. This document is incorporated by reference.

DMH has determined that the proposed regulatory action imposes mandates on county government when County Mental Health Programs apply for funds pursuant to these regulations. However, funds are available through the Mental Health Services Fund created by the Mental Health Services Act and codified in Welfare and Institutions Code, Section 5890 to finance the mandates as required by Part 7(commencing with Section 17500) of Division 4 of the Government Code.

STATE OF CALIFORNIA

**ECONOMIC AND FISCAL IMPACT STATEMENT  
(REGULATIONS AND ORDERS)**

STD. 000 (Rev. 2-88; electronic version 1-00)

See SAM Sections 6600 - 6680 for Instructions and Code Citations

DEPARTMENT NAME

**DEPARTMENT OF MENTAL HEALTH**

CONTACT PERSON

**Steve Appel**

TELEPHONE NUMBER

**654-4027**

DESCRIPTIVE TITLE FROM NOTICE REGISTER OR FORM 400

**Mental Health Services Act**

NOTICE FILE NUMBER

**Z****ECONOMIC IMPACT STATEMENT****A. ESTIMATED PRIVATE SECTOR COST IMPACTS***(Include calculations and assumptions in the rulemaking record.)*

1. Check the appropriate box(es) below to indicate whether this regulation:

☐ a. Impacts businesses and/or employees☐ b. Impacts small businesses☐ c. Impacts jobs or occupations☐ d. Impacts California competitiveness☐ e. Imposes reporting requirements☐ f. Imposes prescriptive instead of performance standards☐ g. Impacts individuals☒ h. None of the above (Explain below. Complete the Fiscal Impact Statement as appropriate.)h. (cont) Impacts local county government when applying for funds associated with the Mental Health Services Act (MHSA)*(If any box in Items 1 a through g is checked, complete this Economic Impact Statement.)*

2. Enter the total number of businesses impacted: \_\_\_\_\_ Describe the types of businesses (Include nonprofits): \_\_\_\_\_

Enter the number or percentage of total businesses impacted that are small businesses: \_\_\_\_\_

3. Enter the number of businesses that will be created: \_\_\_\_\_ eliminated: \_\_\_\_\_

Explain: \_\_\_\_\_

4. Indicate the geographic extent of impacts: ☐ Statewide ☐ Local or regional (list areas): \_\_\_\_\_

5. Enter the number of jobs created: \_\_\_\_\_ or eliminated: \_\_\_\_\_ Describe the types of jobs or occupations impacted: \_\_\_\_\_

6. Will the regulation affect the ability of California businesses to compete with other states by making it more costly to produce goods or services?

☐ Yes ☐ No If yes, explain briefly: \_\_\_\_\_**B. ESTIMATED COSTS***(Include calculations and assumptions in the rulemaking record.)*

1. What are the total statewide dollar costs that businesses and individuals may incur to comply with this regulation over its lifetime? \$ \_\_\_\_\_

a. Initial costs for a small business: \$ \_\_\_\_\_

Annual ongoing costs: \$ \_\_\_\_\_

Years: \_\_\_\_\_

b. Initial costs for a typical business: \$ \_\_\_\_\_

Annual ongoing costs: \$ \_\_\_\_\_

Years: \_\_\_\_\_

c. Initial costs for an individual: \$ \_\_\_\_\_

Annual ongoing costs: \$ \_\_\_\_\_

Years: \_\_\_\_\_

d. Describe other economic costs that may occur: \_\_\_\_\_

2. If multiple industries are impacted, enter the share of total costs for each industry: \_\_\_\_\_

3. If the regulation imposes reporting requirements, enter the annual costs a typical business may incur to comply with these requirements. (Include the dollar costs to do programming, record keeping, reporting, and other paperwork, whether or not the paperwork must be submitted.): \$ \_\_\_\_\_

4. Will this regulation directly impact housing costs? ☐ Yes ☐ No If yes, enter the annual dollar cost per housing unit:

\$ \_\_\_\_\_ and the number of units: \_\_\_\_\_

**ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98, electronic)**

5. Are there comparable Federal regulations? ☐ Yes ☐ No Explain the need for State regulation given the existence or absence of Federal regulations: \_\_\_\_\_

Enter any additional costs to businesses and/or individuals that may be due to State - Federal differences: \$ \_\_\_\_\_

**C. ESTIMATED BENEFITS** *(Estimation of the dollar value of benefits is not specifically required by rulemaking law, but is encouraged.)*

1. Briefly summarize the benefits that may result from this regulation and who will benefit: \_\_\_\_\_
2. Are the benefits the result of: ☐ specific statutory requirements, or ☐ goals developed by the agency based on broad statutory authority?  
Explain: \_\_\_\_\_
3. What are the total statewide benefits from this regulation over its lifetime? \$ \_\_\_\_\_

**D. ALTERNATIVES TO THE REGULATION** *(Include calculations and assumptions in the rulemaking record. Estimation of the dollar value of benefits is not specifically required by rulemaking law, but is encouraged.)*

1. List alternatives considered and describe them below. If no alternatives were considered, explain why not here: \_\_\_\_\_
- Alternative 1: \_\_\_\_\_
- Alternative 2: \_\_\_\_\_
2. Summarize the total statewide costs and benefits from this regulation and each alternative considered:
- |                |                   |                |
|----------------|-------------------|----------------|
| Regulation:    | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 1: | Benefit: \$ _____ | Cost: \$ _____ |
| Alternative 2: | Benefit: \$ _____ | Cost: \$ _____ |
3. Briefly discuss any quantification issues that are relevant to a comparison of estimated costs and benefits for this regulation or alternatives: \_\_\_\_\_
4. Rulemaking law requires agencies to consider performance standards as an alternative, if a regulation mandates the use of specific technologies or equipment, or prescribes specific actions or procedures. Were performance standards considered to lower compliance costs? ☐ Yes ☐ No  
Explain: \_\_\_\_\_

**E. MAJOR REGULATIONS** *(Include calculations and assumptions in the rulemaking record.)*  
*Boards, offices and departments within Cal/EPA are subject to the following additional requirements per Health and Safety Code section 57005.*

1. Will the estimated costs of this regulation to California business enterprises exceed \$10 million? ☐ Yes ☐ No (If No, skip this section.)
2. Briefly describe each equally as effective alternative, or combination of alternatives, for which a cost-effectiveness analysis was performed:
- Alternative 1: \_\_\_\_\_
- Alternative 2: \_\_\_\_\_
3. For the regulation, and each alternative just described, enter the estimated total cost and overall cost-effectiveness ratio:
- |                |          |                                 |
|----------------|----------|---------------------------------|
| Regulation:    | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 1: | \$ _____ | Cost-effectiveness ratio: _____ |
| Alternative 2: | \$ _____ | Cost-effectiveness ratio: _____ |

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98, electronic)

## FISCAL IMPACT STATEMENT

## A. FISCAL EFFECT ON LOCAL GOVERNMENT

(Indicate appropriate boxes 1 through 6 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year which are reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code. Funding for this reimbursement:
- ☐ a. is provided in (Item \_\_\_\_\_, Budget Act of \_\_\_\_\_) or (Chapter \_\_\_\_\_, Statutes of \_\_\_\_\_).
- ☐ b. will be requested in the \_\_\_\_\_ Governor's Budget for appropriation in Budget Act of \_\_\_\_\_.
- ☒ 2. Additional expenditures of approximately \$356,870,000 (amount budgeted as estimated to be expended in Fiscal Year 2005-06 for Community Services and Supports) in the current State Fiscal Year which are not reimbursable by the State pursuant to Section 6 of Article XIII B of the California Constitution and Sections 17500 et seq. of the Government Code because this regulation:
- ☐ a. implements the Federal mandate contained in \_\_\_\_\_.
- ☐ b. implements the court mandate set forth by the \_\_\_\_\_ court in the case of \_\_\_\_\_ vs \_\_\_\_\_.
- ☒ c. implements a mandate of the people of this State expressed in their approval of Proposition No. 63 at the November 2004 election.
- ☐ d. is issued only in response to a specific request from the \_\_\_\_\_, which is/are the only local entity(s) affected.
- ☒ e. will be fully financed from the Mental Health Services Fund authorized by \_\_\_\_\_ (FEE, REVENUE, ETC.)
- Section 17043 and 19602.5 of the Revenue and Taxation Code.
- ☐ f. provides for savings to each affected unit of local government which will, at a minimum, offset any additional costs to each such unit.
- ☐ 3. Savings of approximately \$ \_\_\_\_\_ annually.
- ☐ 4. No additional costs or savings because this regulation makes only technical, non-substantive or clarifying changes to current law and regulations.
- ☐ 5. No fiscal impact exists because this regulation does not affect any local entity or program.
- ☐ 6. Other: \_\_\_\_\_

## B. FISCAL EFFECT ON STATE GOVERNMENT

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year. It is anticipated that State agencies will:
- ☐ a. be able to absorb these additional costs within their existing budgets and resources.
- ☐ b. request an increase in the currently authorized budget level for the \_\_\_\_\_ fiscal year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any State agency or program.
- ☒ 4. Other: Expenditures authorized in the 2005 Budget Act in the MHSA fund.

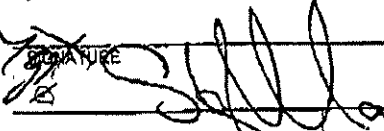
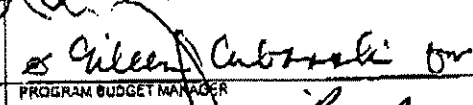
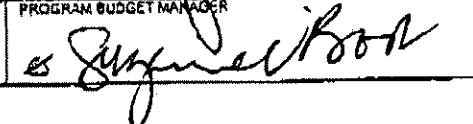
## C. FISCAL EFFECT ON FEDERAL FUNDING OF STATE PROGRAMS

(Indicate appropriate boxes 1 through 4 and attach calculations and assumptions of fiscal impact for the current year and two subsequent Fiscal Years.)

- ☐ 1. Additional expenditures of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 2. Savings of approximately \$ \_\_\_\_\_ in the current State Fiscal Year.
- ☐ 3. No fiscal impact exists because this regulation does not affect any federally funded State agency or program.

## ECONOMIC AND FISCAL IMPACT STATEMENT cont. (STD. 399, Rev. 2-98, electronic)

☐ 4. Other: \_\_\_\_\_

SIGNATURE 		TITLE Director
AGENCY SECRETARY APPROVAL/CONCURRENCE	 PROGRAM BUDGET MANAGER	DATE 12/30/05
DEPARTMENT OF FINANCE <sup>1</sup> APPROVAL/CONCURRENCE	 JMC	DATE 12/20/05

1. The signature attests that the agency has completed the STD. 399 according to the instructions in SAM sections 6600-6680, and understands the impacts of the proposed rulemaking. State boards, offices, or departments not under an Agency Secretary must have the form signed by the highest ranking official in the organization.
2. Finance approval and signature is required when SAM sections 6600-6670 require completion of the Fiscal Impact Statement in the STD. 399. However, Finance must immediately receive a copy of each STD. 399 submitted to OAL without Finance signature, and Finance may subsequently question the "no fiscal impact" finding of a state agency.